

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA,
BRYSON CITY DIVISION

GRADY W. POWERS
 PETITIONER,

VS

NORTH CAROLINA

CASE NO:

2:99CV5-MU-2

FILED
 ASHEVILLE, N.C.

MAY - 1 1999

U.S. DISTRICT COURT
 W. DIST. OF N.C.

MOTION FOR RECONSIDERATION
REQUESTING THE COURT TO RECONSIDER
PETITIONERS PETITION FOR A WRIT OF
HABEAS CORPUS

PETITIONERS PETITION FOR A WRIT OF HABEAS CORPUS WAS DENIED AS UNTIMELY, AND THE CASE WAS DISMISSED ON FEBRUARY 11TH, 1999.

PETITIONER FILED HIS PETITION FOR WRIT OF HABEAS CORPUS ON JANUARY 11TH, 1999. THE COURT CLAIMS THAT ANY PETITION FILED AFTER APRIL 23RD, 1997 ARE BARRED BY THE ONE YEAR TIME LIMITATION. NOT ONLY WAS THE PETITIONER UNAWARE OF SUCH A TIME LIMIT, PETITIONER HAD A 2255 PETITION, (CONSTRUED BY THE COURT,) PRESENTLY IN THE SAME DISTRICT. HOWEVER, THIS WOULDN'T REALLY HAVE MATTERED, BECAUSE THE PETITIONER DID NOT BECOME AWARE THAT HIS STATE PRIOR WAS USED UNCONSTITUTIONALLY AGAINST HIM IN FEDERAL COURT

AS A PRIOR CONVICTION FOR ENHANCEMENT PURPOSES
UNTIL AFTER HIS 2255 WAS DENIED IN APRIL 1997.
WHEN PETITIONER LEARNED THAT HIS STATE CASE
WAS USED UNCONSTITUTIONALLY HE IMMEDIATELY BE-
GAN SENDING FOR, AND REQUESTING HIS STATE RECORDS.
PETITIONER IS IN PRISON AND EVERYTHING HAVING
TO BE SUBMITTED TO COURTS HAS TO BE DONE THROUGH
THE MAIL. THERE IS NO DOUBT THAT THIS TAKES TIME
TO GET TOGETHER. ON JULY 13, 1997 PETITIONER REQUESTED
RECORDS FROM THE TRIAL COURT. PETITIONER FINALLY RE-
CEIVED SOME OF HIS RECORDS AND WAS ABLE TO FILE
HIS HABEAS CORPUS TO THE STATE IN DECEMBER 1997.
AS INDICATED IN PRO-SE, PETITIONER'S 2254 HABEAS
CORPUS MOTION, MOTIONS WERE FILED IN THE TRIAL
COURT, APPEAL'S COURT, AND THE SUPREME COURT ON A
STATE LEVEL IN NORTH CAROLINA. ON OCTOBER 8TH,
1998, THE SUPREME COURT DENIED PETITIONER'S MOTION.
ON JANUARY 11, 1999 THE PETITIONER FILED HIS 2254
HABEAS CORPUS REQUESTING RELIEF FROM THIS UNC-
ONSTITUTIONALLY USED PRIOR IN THE FEDERAL COURT.
BASICALLY, THE PETITIONER WAS NOT AWARE THAT HIS
PRIORS HAD BEEN USED UNCONSTITUTIONALLY, (NEWLY
DISCOVERED EVIDENCE), AND CERTAINLY WASN'T EVER
AWARE OF ANY SUCH TIME LIMIT. IN FACT THE ST-
ATE COURT NEVER EVEN MENTIONED ANY SUCH TIME
LIMIT WHATSOEVER. THERE IS NO DOUBT THAT THE
PETITIONER IS A LAYMAN OF THE LAW, AND QUITE
IGNORANT OF THE LAW, IN FACT, THE PETITIONER'S
FEELS THAT UNDER THE CIRCUMSTANCES, HIS 2254 SH-
OULD BE ALLOWED TO BE HEARD. IN FACT, CONSIDERING

"NEWLY DISCOVERED EVIDENCE", THE PETITIONER JUST LEARNED RECENTLY THAT AN UNCOUNSELED CONVICTION MAY NOT BE USED TO ENHANCE A SENTENCE FOR A LATER CONVICTION. U.S. VS KANEAKUA, 105 F3d 463 (9th CIR. 1997), TUCKER VS U.S., 404 US 443, 30 LED 2d 592, 92 SCT 589 (1972), GIDEON VS WAINWRIGHT, 372 US 335, 9 LED 2d 799, 83 SCT 792 (1963). JUST FOR THE RECORD, THE PETITIONER SIGNED A "WAIVER OF COUNSEL" FORM IN THE STATE OF NORTH CAROLINA FOR THIS VERY PRIOR CONVICTION ON 6-13-88. ON 6-13-88 THE PETITIONER WAIVED COUNSEL, PLED GUILTY, AND WAS SENTENCED. THERE AGAIN IS A CLEAR VIOLATION OF HIS CONSTITUTIONAL RIGHTS. HOWEVER, THE PETITIONER JUST RECENTLY LEARNED OF THIS, AND SO IT WAS NEVER ARGUED. IS THE PETITIONERS RIGHTS GOING TO BE ALLOWED TO BE VIOLATED SIMPLY BECAUSE HE IS A LAYMAN OF THE LAW, IGNORANT OF ANY, AND ALL JUDICIAL PROCEDURES. BASICLY THE PETITIONER IS IGNORANT OF SUCH THINGS, AND IS UNABLE TO HIRE COUNSEL, AND IS SIMPLY DOING THE BEST HE CAN. PETITIONERS ONLY EXCUSE IS IGNORANCE. HAD PETITIONER BEEN AWARE OF ANY SUCH TIME LIMIT, HE WOULD HAVE MET IT. OF COURSE CONSIDERING THE PETITIONERS CIRCUMSTANCES, THERE SURELY ISN'T ANY WAY POSSIBLE HE COULD HAVE DONE THIS. PETITIONER HAD TO FIRST EXHAUST HIS AVAILABLE STATE COURT REMEDIES AS TO EACH GROUND, IN ORDER TO PROCEED INTO FEDERAL COURT. BASICLY THE PETITIONER BELIEVES THAT HE WAS DENIED THE BASIC GUARANTEES

OF FAIRNESS AND DUE PROCESS CALLED FOR BY THE
NORTH CAROLINA CONSTITUTION, NORTH CAROLINA LAWS,
AND THE CONSTITUTION OF THE UNITED STATES OF
AMERICA. FOR THE REASONS STATED ABOVE THE
PRO-SE PETITIONER PRAYS THAT THE COURT WILL RE-
CONSIDER PETITIONER'S PETITION FOR WRIT OF HABEAS
CORPUS.

FEBRUARY 24TH 1999

RESPECTFULLY SUBMITTED,
Grady Powers

GRADY WILLIAM POWERS

RG# 13358-074

Box P.M.B.

ATLANTA GA. 30315

HAINES VS KERNER

404 U.S. 592 S. CT 594 (1972)

CERTIFICATE OF SERVICE

I, GRADY WILLIAM POWERS, HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING MOTION HAS BEEN PLACED IN THE INSTITUTIONS OUT GOING LEGAL MAIL BOX, WITH AFFIXED POSTAGE TO THE FOLLOWING:

UNITED STATES DISTRICT COURT
CLERK OF THE COURT
309 U.S. COURTHOUSE BLDG.
100 OTIS STREET
ASHEVILLE N. CAROLINA 28801-2611

ON THIS 24th DAY OF FEBRUARY 1999.

RESPECTFULLY
Grady Powers
GRADY W. POWERS
RG# 13358-074
Box P.M.B.
ATLANTA GA. 30315